

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL BERESWILL,

Plaintiff.

-against-

THE MUNDIAL GROUP, INC.,

Defendant.

x

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ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>5/1/2023</u>

22 civ 2997 (CM)(JLC)

ORDER

McMahon, J.:

The complaint in this action charges Defendant with the copyright infringement and falsification via the republication and alteration of a copyrighted photograph of Aroldis Chapman in mid-pitch that was taken by Bereswill, a professional photographer.

No answer has been filed in this action. On January 31, 2023 (Dkt # 18), Plaintiff, having obtained a certificate of default from the Clerk of Court (Dkt #12), filed a motion for a default judgment against Defendant. The court demanded that, in accordance with its rules, service be made on Defendant in the same manner as service of a summons, so as to avoid any possibility that Defendant did not get notice of this motion. (Dkt. #23). Plaintiff responded with a letter explaining the efforts it had made and the difficulties it was having in effecting service on the Defendant at what is still listed as its principal place of business and its last known address: 28 E. 28th Street, New York, New York. Plaintiff indicated that it had, among other things, emailed Defendant at the email address listed on its web site.

Apparently one or more of Plaintiff's efforts bore fruit, because, on April 28, the Pro Se Intake Office of the court accepted two documents: a Motion to Dismiss the Complaint (Dkt. No. 26) and a supporting declaration from one Felix M. Sencion, the "founder of Mundial Group Inc.," who explained his company's absence from its headquarters as having something to do with the COVID and the landlord's closing the floor.¹ Mr. Sencion admitted to having several pending lawsuits and expressed a desire to resolve them amicably. The declaration does not suggest any reason why the lawsuit should be dismissed – other, perhaps, than Mr. Sencion's desire not to be sued.

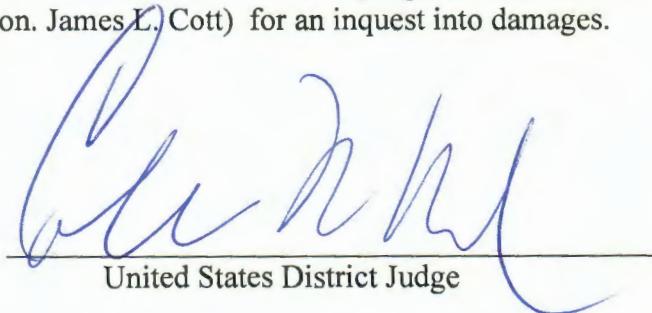
¹ There was also some mention of having survived the World Trade Center disaster of 2001, though no explanation about how Mundial was affected by that event.

Mr. Sencion claims to be “self-represented.” However, The Mundial Group, Inc., is a corporation. Corporations cannot be “self-represented;” only individuals can represent themselves, and Mr. Sencion has not been sued. He may be the sole owner of his corporation, but The Mundial Group must appear by a licensed attorney or it will be deemed in default. Federal law requires a corporation to be represented by an attorney, 28 USC Sec. 1654, *Eagle Associates v. Bank of Montreal*, 926 F. 2d 1305, 1308 (2d Cir. 1991). A corporation may not appear in an action by a lay person. *Jones v. Niagara Frontier Transportation Authority*, 722 F. 2d 20, 22 (2d cir. 1983). This conclusion is also in accord with New York law. See NY CPLR Sec. 321(a).

Mr. Sencion does not say whether he is a lawyer or not. If he is, he may represent the corporation. If he is not, he may not do so.

This court is always reluctant to grant a default judgment when a party (or someone purporting to represent a party) appears, even at the last minute as has occurred here. But the law is the law. I will give Mr. Sencion thirty days from today (i.e., until May 31, 2023) to hire a lawyer to represent his corporation in this lawsuit. If an attorney does not file a notice of appearance by close of business on May 31, I will grant the motion for a default judgment and send the matter to the assigned Magistrate Judge (the Hon. James L. Cott) for an inquest into damages.

Dated: May 1, 2023



James L. Cott
United States District Judge

BY ECF TO ALL PARTIES

BY FIRST CLASS MAIL TO FELIX SENCION AT:

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BY EMAIL TO MR. SENCION AT:

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